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### **REMARKS**

In a final Action mailed 3 November 2006 the Examiner maintained her rejection of the pending claims, 1-5 and 7-13, for obviousness under 35 USC Sec. 103(a). Claims 2 and 4 were objected to on account of a typographical error.

The substantive rejection of the active claims is unchanged from the first action. Claims 1-5 were rejected over Torneback (U.S. 4,180,172) in view of Lowe et al. (U.S. 2,892,556) further in view of Anger et al. (U.S. 2,885,616). Claim 7 was rejected as unpatentable based on the combination of Torneback in view of Anger further in view of Schwartz (U.S. 2,710,105) and Roth et al. (U.S. 4,180,366). Claim 8 was rejected on the combination applied to claim 7 further in view of Eckelberry (U.S. 2002/0130479). Claims 9 and 10 were rejected on the basis of the combination applied to claim 8 further in view of Lowe. Claims 11 and 12 were rejected over the combination of Torneback in view of Anger, Roth and Lowe. Claim 13 was rejected over Torneback in view of Anger, Roth, Lowe and Eckelberry. Claims 1, 7 and 11 have been amended to further distinguish over the prior art. Claim 1 has been amended to positively recite structure which allows vertical level movement of one of the three segments of the platform. Claims 1, 7 and 11 have been amended to positively recite moving selected segments clear of the trailer to allow vertical translation of one segment. Claims 2 and 4 have been amended to correct the error identified by the Examiner. Claims 1-5 and 7-13 remain active.

The present invention is generally directed to cargo handling on truck trailers, and more particularly to a trailer borne apparatus which partially automates the unloading process from the trailer to either a trailer bed level dock or to the ground and which minimizes the need for equipment at the point of unloading. The invention disclosed and claimed in the Application meets this problem by providing a platform installed on the bed of a trailer which is partially translatable as a unit off one end of the trailer bed. The platform is divided into three segments or sections. The sections are hinged to one another allowing segments to be rotated once clear of the trailer bed (as

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added to claim 1 by amendment). This allows an end segment to be lowered below of the trailer bed where no raised dock is available while simultaneously kept level with the trailer bed. Actuators are provided for controlling rotation of the sections. Each section further includes a conveyor which is operable independently of the conveyors of the remaining segments. Independent operation must allow individual pallets of cargo to be transferred, positioned and re-spaced on the platform. It also allows for offloading cargo from an end section without use of a forklift truck (See paragraph [0022]). Claim 5 adds the limitation of a controller that permits coordinated operation of the conveyor of the end section and the platform to allow offloading of an object at zero velocity relative to the target surface.

The obviousness rejection directed toward claims 1-5, was based on a combination of Torneback in view of Lowe further in view of Anger. Torneback teaches a segmented platform, or more accurately, a folding platform installed on a trailer. The platform's rearmost section is moved to the front of the trailer by folding sections of the platform forward from the rear section on one another. This repositions articles on the trailer for removal by a crane installed on the towing vehicle (Torneback, col. 1, lines 49-65). Lowe taught a freight supporting platform which can extend outwardly from a vehicle. A jack extending from the bottom of the platform supports the platform from the ground when needed. Anger teaches a conveyor system including at least three sections operating end to end to support and transport material undergoing processing. Anger provided a control system for "maintaining proper speed relationships between different sections of a continuous process line to compensate for motor speed and process material changes occurring along the line." Col. 1, lines 30-35.

Eckelberry describes a trailer height adjustment system.

Schwartz essentially teaches providing a conveyor on a freight bed for moving freight lengthwise on the bed.

Roth teaches a system relating to handicap access systems for busses. The system provides both a stair for able-bodied passengers and a lift for wheel chair bound passengers. The stair unfolds to a platform when used as a lift. A distinction between

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the device of Roth and the present invention is that Roth requires a separate mechanism for deployment of the device as a platform or stair on the one hand, and vertical movement on the other.

Primarily at issue is the source or motivation for combining the references to produce the claimed invention. The Federal Circuit has stated that: "Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). "A suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as "the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references... . The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." However, rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. . . .". *In re Kahn*, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (quoting *In re Kotzab*, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000)).. "[E]vidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved . . . ." 50 USPQ2d 1614 at 1617. "The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular." 50 USPQ2d 1614 at 1617.

In *In re Dembiczak*, the Court overturned rejections for obviousness previously sustained by the Board of Appeals because the Board nowhere particularly identified "any suggestion, teaching, or motivation to combine the children's art references (Holiday and Shapiro) with the conventional trash or lawn bag references, nor [did] the Board make specific—or even inferential—findings concerning the identification of the

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relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis". 50 USPQ2d 1614 at 1618.

In the applicant's view the Examiner has used the present application as a road map for combining the prior art references to produce the claimed invention rather than citing to teachings in the references, knowledge in the art, or the character of the problem to be solved, as motivation for making the combinations. No record has been made of what is ordinary skill in the art. The references are almost devoid of suggestions beyond the immediate problems faced by the respective inventors. There seems little argument or reasoning based on the references beyond a recitation of what the references show.

Regarding the proposed modification of Torneback in view of Lowe the Examiner said: "The motivation was to modify Torneback's extension mechanism with Lowe's device." The "motivation" cannot be rooted in a bare contention that the mechanisms taught by the prior art can be used build the present invention. In any event Torneback does not teach keeping a segment of the platform level with respect to the ground while moved vertically. All of the segments of Torneback which partially leave the bed of the trailer are tilted with respect to the bed. Torneback posed the problem to be met as the removal of objects from the rear of a trailer by means of a crane mounted on the towing vehicle attached to the trailer without detaching the trailer. His solution was to move the load forward on the trailer within reach of the crane. This was achieved by folding up portions of the platform ahead of the segment carrying the load. But Torneback required the removal of a cargo ahead of the target load before the segment on which the target load was positioned could be moved. Applying such a teaching to Lowe defies logic where the object was to move all of a load outside of a truck for ease of access (See Fig. 1). While it is not necessary that the references teach the same purpose as the present application, it is necessary to find some purpose or suggestion supporting the proposed combination. Segmentation of a platform, which was done in order to facilitate folding of the platform in order to move cargo serves no articulated

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purpose where the entire platform has been made moveable in order to displace the platform off of its supporting bed. The very premise of Torneback is that the platform cannot be moved off its bed. The extensibility of Lowe could be used to allow joint repositioning of objects on a trailer, had the sub-floor been freely moveable off both ends of the trailer. But that contradicts the very premise of Torneback.

The further modification of Torneback and Lowe in view of Anger obscures the character of objects handled by the conveyors of Anger. Anger dealt with processing of plasterboard, which is produced in a continuous piece, then cut to size. Sections of board (of any desired length) are cut only after the board has passed the third conveyor (col. 2, lines 21-71). The continuous piece is supported on all three conveyors simultaneously which move at varying speeds relative to one another to adapt to process conditions. In no way does Anger contemplate positioning or separating pallets to allow positioning of a pallet for lowering or separation from other pallets for off loading. Anger provides no motivation for modifying Torneback because it, and for that matter none of the other references, provide any reason for changing the spacing between objects on the conveyors.

The term "independent" in respect to control over the speeds of the conveyors, as used in Anger, is used in a weaker sense than in the present application where conveyors are independently moved. The independent claims, as amended, require that "independent actuation" allow the system to vary the spacing between articles. The conveyor sections of Anger are intended to handle strips of material under process which is to be kept under constant tension at all times. The conveyor line is segmented in order to allow the line to change speed underneath the strip it is supporting as the strip's physical characteristics change during processing. Changes in speed maintain proper tension. In one sense the speeds of the conveyors are independent of one another, but they remain synchronized by the underlying demands of the process. Independent claims 1 and 7 have been amended to add the limitation that the conveyors can operate to vary the spacing between articles supported on different conveyor sections, a situation clearly not contemplated by Anger. The "respacing" limitation of claim 11

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already existed.

Regarding claim 5 the Examiner asserted that Lowe disclosed a "controller providing the retraction of the three segments". Anger was cited as providing a conveyor "to manipulate the movement of cargo." The "controller" described in Lowe was a "manually operated solenoid held switch A, having a "retract" and an "extend" position." (Col. 3, lines 45-6). Anger does not manipulate positioning of "cargo" in any meaningful sense. The proposed combination is devoid of any reasoning directed to meeting the full claim element, which requires:

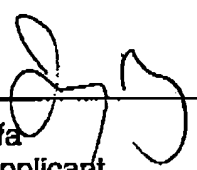
. . . providing for retracting the first, second and third segments into the trailer while the conveyor for the first segment continues to move the last in object off the first segment *at zero velocity relative to the external surface.* (emphasis added):

The references failing to teach the elements asserted to be found therein, and there being no teaching identified which supports making the proposed combinations, the applied references do not render the claimed invention obvious.

The remaining dependent claims recite still further elements distinguishing the invention over the prior art. Applicant believes the Claims are in condition for allowance and respectfully requests favorable action by the Examiner.

Respectfully submitted,

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**CERTIFICATE OF TRANSMISSION UNDER 37 CFR §1.8**

I hereby certify that this **AMENDMENT AFTER FINAL** is being facsimile transmitted to the Patent and Trademark Office on or before 12/12/06 to (571) 273-8300.

Date: 12/12/06

  
Catherine M. Majewski